AVERY-LAURENCE (S'PORE) PTE. LTD. v. ELECTRICAL ENTERPRISES

[C.A. (Wee Chong Jin C.J., Kulasekaram and Tan Ah Tah JJ.)

September 20, 1972]

[Singapore — Civil Appeal No. 38 of 1972]

Practice and Procedure — Application for summary judgment — Unconditional leave to defend — Defendants had, prima facie, a bona fide claim arising out of same transaction between the parties — Good equitable set-off — R.S.C. 1970, O. 14, O. 18, r. 12.

This was an appeal by the defendants from the decision of the judge in chambers giving the plaintiffs leave to sign final judgment on an O. 14 application.

The respondents/plaintiffs' claim was for $32,056.31 "being the balance of an account for services rendered and materials supplied" by them as contractors and electrical suppliers, to the defendants. The writ was issued on March 17, 1972 and on March 24, 1972, the plaintiffs took out a summons for summary judgment under R.S.C. O 14. On April 21, 1972, the registrar gave the defendants unconditional leave to defend.

The plaintiffs appealed to a judge in chambers. On May 5, 1972, the defendants filed their defence and counterclaim in which they claimed to set-off against the whole of the plaintiffs' claim, for $30,339.81, being the total amount of overcharges and discrepancies in the plaintiffs' invoices against them. On June 26, 1972, the judge gave leave to the plaintiffs to sign final judgment for $23,679.71 and ordered that the balance of the claim should proceed to trial.

The defendants appealed to the Court of Appeal. They contended that they were entitled to unconditional leave to defend the whole of the plaintiffs' claim as they had a *bona fide* claim arising out of the subject matter of the plaintiffs' claim and so connected with it as to form part of one transaction between the parties.

Held, allowing the appeal: (1) the appellants/defendants *prima facie* had a *bona fide* claim arising out of the same transaction between the parties which they are entitled to have investigated at a full trial, and that the judge was wrong in law in not considering this aspect of the matter. The defendants' claim, on the facts alleged in the affidavit filed on their behalf, if proved at the trial, would establish a good equitable set-off;

(2) the present case was one which came under R.S.C. 1970 O. 18. r. 17;

(3) the defendants must be granted unconditional leave to defend the whole of the plaintiffs' claim. Costs were to be in the cause both in the present court and the court below.

Case referred to:-

(1) *Morgan & Son Ltd.* v. *S. Martin Johnson & Co. Ltd.* [1949] 1 K.B. 107.

COURT OF APPEAL.

Wong Peng Koon for the appellants.

Amarjit Singh for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the court): In this action the plaintiffs' claim is for $32,056.31 "being the balance of an account for services rendered and materials supplied" by them as contractors and electrical suppliers to the defendants. The writ was issued on 17th March 1972 and on 24th March the plaintiffs took out a summons for summary judgment under Order 14 of the Rules of the Supreme Court which was heard by the registrar on 21st April 1972 when he gave the defendants unconditional leave to defend.

The plaintiffs appealed against the registrar's decision to a judge in chambers and the appeal was heard on 26th June 1972 when the judge gave leave to the plaintiffs to sign final judgment for $23,679.71 and ordered that the balance of the claim should proceed to trial. Prior to 26th June 1972 the defendants filed their defence and counterclaim on 5th May 1972 in which they claim to set-off against the whole of the plaintiffs' claim a claim for $30,339.81 being the total amount of overcharges and discrepancies in the plaintiffs' invoices against them.

In an affidavit affirmed on 30th March 1972, the deputy managing director of the defendants stated that out of a total of 136 invoices, (which included the invoices the subject matter of the plaintiffs' claim) amounting to $466,847.25 the plaintiffs had overcharged the defendants $30,339.81 and as the defendants had already paid the plaintiffs $437,460.44 the defendants have in effect overpaid to the plaintiffs a sum of $953. It is not in dispute that the plaintiffs were sub-contractors of the defendants in respect of various projects in which the defendants were engaged for the purpose of supplying transportation, crane services, equipment and labour.

The judge held the plaintiffs were entitled to judgment for $23,679.71 because (1) this sum is admitted by the defendants as owing by them to the plaintiffs on the invoices set out in the particulars of the statement of claim endorsed in the writ; (2) the "counterclaim", which is denied by the plaintiffs, is in respect of the plaintiffs' invoices which have already been paid, and (3) "there is no reason why the plaintiffs should be kept waiting for their money which the defendants admit is due to the plaintiffs."

The defendants now appeal to the Court of Appeal and contend that they are entitled in law to unconditional leave to defend the whole of the plaintiffs' claim. They contend that they have a *bona fide* claim arising out of the subject-matter of the plaintiffs' claim and so connected with it as to form part of one transaction between the parties. It is clear from a letter dated 16th March 1972 that the defendants' claim regarding overcharging had been put forward before the writ was issued. It is stated in the said affidavit of the deputy managing director of the defendants that he had drawn the attention of a partner of the plaintiffs to the various items in the plaintiffs' bills where the defendants were overcharged.

We are satisfied that the defendants *prima facie* have a *bona fide* claim arising out of the same transaction between the parties which they are entitled to have investigated at a full trial and that the judge was wrong in law in not considering this aspect of the matter. We are of the opinion that the defendants' claim on the facts alleged in the affidavit filed on behalf of the defendants, if proved at the trial, would establish a good equitable set-off. There is clear authority, (see *Morgan & Son, Ltd.* v. *S. Martin Johnson & Co. Ltd.*,[1] that where a defendant alleges, *bona fide*, facts which, if proved, would establish a good equitable set-off, he should be given unconditional leave to defend.

We would add the present case is clearly one which comes within the provisions of Order 18 rule 17 which provides as follows: —

"Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim."

We accordingly allow the appeal and grant unconditional leave to the defendants to defend the whole of the plaintiffs' claim. The costs of this appeal and of the proceedings in the court below should be costs in the cause.

Appeal allowed.

Solicitors: *Shook Lin & Bok; David Marshall.*

RAMACHANDRAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Chua J.) September 21, 1972]

[Singapore — Magistrate's Appeal No. 74 of 1971]

Criminal Law and Procedure — Charge — "Rolled-up" charge incorporating two distinct offences — Bad for duplicity — Curable where there is no failure of justice — Criminal Procedure Code (Cap. 113, 1970 Ed.), ss. 161 and 382.

Evidence — Accomplice evidence — Evidence of one accomplice accepted as corroboration — Effect of — Non-accomplice corroboration in material particulars required.

This was an appeal by the appellant against conviction on a charge under section 6(a) of the Prevention of Corruption Ordinance 1960, of corruptly obtaining from one Sathan, for himself a gratification of a sum of $100 as a reward for forbearing to do an act in relation to his principal's affairs to wit, to put up a detention case under the Criminal Law (Temporary Provisions) Ordinance against the said Sathan, and to take action against one Palanichamy to be sent to India.

One of the main grounds of appeal was that the charge was bad for duplicity. It was submitted that in this case two distinct offences were rolled up into one charge in contravention of statutory provisions and that the charge was unlawful and therefore void. As a result, two points arose for consideration: (1) whether the charge was bad for duplicity, and (2) if there was duplicity, whether it was an irregularity which could be cured under section 382 of the Criminal Procedure Code, or was it an irregularity which could only result in the conviction being quashed.

Another point taken on appeal was that the learned district judge erred in law in holding that Sathan was not an accomplice and in holding that the evidence of Palanichamy, an admitted accomplice, was substantially corroborated by Sathan when Sathan was himself an accomplice and was thus incapable of corroborating the evidence of another accomplice.

Held, allowing the appeal: (1) in the circumstances of this case, there were two distinct offences combined in a single charge; though they were similar offences each offence should have been the subject of a separate charge and tried together. The charge constituted an irregularity which was curable unless it could be shown that there had been a failure of justice. In the present case, the court was satisfied that the irregularity had occassioned no failure of justice;

(2) on the facts of this case, Sathan could not but be regarded as an accomplice, and his evidence needed corroboration in material particulars. Since the learned district judge had accepted his evidence as corroborative which was not in law corroborative evidence, the conviction must be quashed.

Cases referred to:-

(1) *Chunnoo* v. *State* A.I.R. 1954 All. 795 at p. 797.

(2) *Banwarilal* v. *Union of India* A.I.R. 1963 S.C. 1620 at p. 1624.

(3) *Davis* v. *Director of Public Prosecution* [1954] A.C. 378 at p. 400.

MAGISTRATE'S CRIMINAL APPEAL

Dato' David Marshall for the appellants.

Glenn Knight (Deputy Public Prosecutor) for the respondent.

Chua J.: This appeal is against the appellant's conviction in the District Court on the following charge:

"That he, on or about the 8th day of January, 1971 at about 8.45 p.m., outside the Beach Road Police Station, Beach Road, Singapore, being an agent, to wit, a Detective Police Constable bearing number 2783 employed by the Police Republik Singapore, corruptly obtained from one Sathan Periak Aruppan for himself a gratification of a sum of one hundred dollars ($100), as a reward for forbearing to do an act in relation to his principal's affairs to wit, to put up a detention case under the Criminal Law (Temporary Provisions) Ordinance against the said Sathan Periak Aruppan and to take action against one Palanichamy Sooruli to be sent to India, and he had thereby committed an offence punishable under Section 6(a) of the Prevention of Corruption Ordinance, 1960 (No. 39 of 1960; Reprint No. RS (A) 27 of 1966)."

The prosecution evidence is shortly this. Sathan Periak Aruppan (hereinafter referred to as "Sathan") is a grass cutter employed in the anti-malarial unit of the Public Health Department. He earned extra money by washing motor cars at No. 24 Tomlinson Road, a block of flats. S. Nadeson, a mandore working also in the anti-malarial unit of the Public Health Department, was given a contract to clean the flats at No. 24 Tomlinson Road. A dispute arose between Sathan and Nadeson over the washing of the motor cars at No. 24 Tomlinson Road. On the 13th July, 1970, Sathan wrote a letter to the Commissioner of Police alleging that Nadeson had engaged gangsters to assault him. Sathan was called for by the C.I.D. and he went there on the 3rd August, 1970, and he was seen by the appellant who recorded a statement from him. Appellant then told Sathan to go home and said that he would visit him in a day or two.

About twelve days later Sathan went to the C.I.D. He met the appellant at a bus stop in Robinson Road near the C.I.D. They adjourned to a nearby coffee shop and later they went into the C.I.D. There the appellant informed Sathan that the persons he had named in his letter to the Commissioner of Police had been questioned and it appeared that he had made a false complaint. The appellant then asked if Sathan knew one Thamby Kechil who he wished to question. When Sathan replied in the affirmative the appellant asked Sathan to take him there. Sathan then took the appellant to Thamby Kechil's house. The appellant went into Thamby Kechil's house and came out a few minutes later. Sathan then took the appellant to the police quarters at Beach Road Police Station where the appellant pointed out his quarters. The appellant told Sathan that he had helped other people and he was willing to help Sathan if he was given some money. Sathan told the appellant that he was in a difficult position as he had a lot of expenses to meet as Deepa-